

ARKANSAS COURT OF APPEALS

DIVISION I
No. CACR08-172

KEITH LASHAWN WILDER
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered September 10, 2008

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR2006-4726]

HONORABLE JOHN LANGSTON,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Following a bench trial in Pulaski County Circuit Court, appellant Keith Wilder was convicted of robbery and theft of property. After the trial court found Wilder to be a habitual offender with more than one prior felony conviction, the court sentenced him to ten years' imprisonment for each conviction, to run concurrently. He appeals his convictions, arguing that there was insufficient evidence to support them. We affirm.

On October 5, 2006, Calley Kimble drove to her friend "Alex's" house in her 2006 Mitsubishi Eclipse. Kimble pulled into Alex's driveway, left her vehicle running, walked to the front door, and knocked. No one answered the door. As Kimble turned back toward her vehicle, she observed a man (later identified as Wilder) cross the street and approach her at the front door. Wilder grabbed Kimble's arm. Kimble thought Wilder knew Alex and was playing a joke on her, so she asked if Alex was home. Wilder answered "no" and pulled her

to the side of the house, where he grabbed a trash can. Kimble asked Wilder what he was doing, but he did not answer.

Wilder then, according to Kimble, with a grin on his face and still gripping her arm, pulled her across the street. He tried to open a vehicle and told her, “you’re fixing to get in this car.” Because the vehicle was locked, Wilder could not open it. By this point, Kimble realized that Wilder was not joking, told him to let go, and pulled away from him. Wilder did not let go. He pulled her back across the street to her vehicle, and he opened the gas tank. Suddenly, another man started walking over toward them, at which time Wilder shoved Kimble down and jumped into her vehicle. Kimble jumped out of the way to avoid being hit by Wilder as he sped off.

Kimble immediately called 911 and reported that her vehicle was stolen. Kimble testified that she did not give Wilder permission to drive her vehicle and, further, that she did not know him. Later that day, police recovered her vehicle.

Ronald Parks testified that on October 5, 2006, he had gone to his friend “Fookie’s” house to visit. Fookie lives near Alex. Fookie and Parks were standing outside talking when Wilder walked over to them. Parks testified that he knew Wilder from working together. As they were talking, Parks noticed a woman pull up to Alex’s house. Parks testified that the woman left her car running when she went to Alex’s door. Parks said that Wilder acted as though he knew the woman because “he ran up to her and greeted her and hugged her and whatnot.” Parks saw Wilder and Kimble walk toward the back yard and then across the street. Parks stated that it looked as though Wilder and Kimble were holding hands as they walked.

Then, according to Parks's testimony, Wilder tried to open Parks's vehicle, which was locked, and Parks told Wilder to stay away from it.

Parks testified that Wilder and the woman then walked back over to the woman's vehicle, and she tried to get into it. That is when Parks saw Wilder grab Kimble and throw her away from the vehicle. Parks testified that Kimble looked frightened at this point. Wilder got in the vehicle and backed out of the driveway. Parks said that if Kimble had not moved out of the way, Wilder would have struck her with the vehicle when he drove away. Kimble told Parks that Wilder took her vehicle, so Parks offered her his cell phone so that she could call 911.

Little Rock Police Officers Chris Alsbrook and William Farnham testified at trial that on October 5, 2006, while they were on patrol, a vehicle ran a red light, made a left turn in an intersection directly in front of them, and almost caused an accident. The officers initiated a traffic stop and learned that the driver was Wilder. The officers testified that Wilder had a blank stare on his face, was non-responsive to questioning, and seemed to be drifting in and out of consciousness. Because of Wilder's behavior, the officers called an ambulance, which transported Wilder to the hospital. The officers later learned that the vehicle Wilder was driving was taken by force from Kimble. Officer Alsbrook testified that he had heard, based on prior dealings with Wilder, that Wilder suffered from a brain tumor. Officer Farnham testified that he later learned that Wilder was under the influence of intoxicants at the time of his arrest.

After the State rested, Wilder moved for directed verdict on three counts (robbery,

theft of property, and criminal intent to commit kidnaping), arguing that the State failed to present sufficient proof of Wilder's intent. Specifically, Wilder argued that the State failed to present proof that Wilder had the qualifications or mind set to actually form the intent to commit the crimes. The trial court denied the motion.

Wilder testified on his own behalf, stating that he did not remember what happened October 5, 2006. Wilder said that he had been diagnosed with a brain tumor, which requires medication. He further stated that he had not been taking his medication due to a lack of funds. He testified that, when he does not take his medication, "sometimes I do things that I know not of what I'm doing." He testified that all he remembers is waking up in the hospital where he was advised that he had attempted to take a woman's vehicle. Wilder testified that he did not set out to take Kimble's vehicle or to harm her in any way. Wilder denied being under the influence of narcotics on October 5, 2006; however, he admitted that he tested positive for cocaine and PCP on that date. He also admitted to being arrested for possession of a controlled substance and for possession of a controlled substance with the intent to distribute, both in 1997. Following Wilder's testimony, he renewed his motion for directed verdict, which was again denied.

The trial court found Wilder guilty of robbery and theft of property but acquitted him of criminal attempt to commit kidnaping. The trial court later sentenced Wilder as a habitual offender, ordering him to serve 120 months' imprisonment for each conviction, to run concurrently. Wilder's sole point on appeal is that the trial court erred in finding sufficient evidence to support the robbery and theft-of-property convictions.

When the sufficiency of the evidence is challenged on appeal from a criminal conviction, we review the evidence and all reasonable inferences in the light most favorable to the State and will affirm if the finding of guilt is supported by substantial evidence. *Brown v. State*, 74 Ark. App. 281, 47 S.W.3d 314 (2001). Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another that passes beyond mere speculation or conjecture. *Reinert v. State*, 348 Ark. 1, 71 S.W.3d 52 (2002).

A person commits robbery if, “with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another.” Ark. Code Ann. § 5-12-102(a) (Repl. 2006). “Physical force” is defined as any “bodily impact, restraint, or confinement” Ark. Code Ann. § 5-12-101(1) (Repl. 2006). “A person acts purposely with respect to his or her conduct or a result of his or her conduct when it is the person’s conscious object to engage in conduct of that nature or to cause the result.” Ark. Code Ann. § 5-2-202(1) (Repl. 2006).

The crime of theft of property occurs if a person knowingly takes or exercises unauthorized control over the property of another with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1) (Supp. 2007). A person acts knowingly with respect to his conduct or the attendant circumstances when he “is aware that his . . . conduct is of that nature or that the attendant circumstances exist,” or he acts knowingly with respect to the result of his conduct when “he . . . is aware that it is practically certain that his . . . conduct will cause the result.” Ark. Code Ann. § 5-2-202(2)(A) & (B) (Repl. 2006).

Wilder argues that because he was unaware of his actions (he could not remember the incident), the State failed to present sufficient proof of his intent—that he purposefully and knowingly committed the crimes of robbery and theft of property. A criminal defendant’s intent or state of mind is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *DeShazer v. State*, 94 Ark. App. 363, 230 S.W.3d 285 (2006). Because intent cannot be proven by direct evidence, the fact finder is allowed to draw upon common knowledge and experience to infer it from the circumstances. *Id.* Due to the difficulty in ascertaining a defendant’s intent or state of mind, a presumption exists that a person intends the natural and probable consequences of his or her acts. *Id.*

After reviewing the evidence and all reasonable inferences and circumstances of this case in a light most favorable to the State, we hold that the State presented sufficient evidence of Wilder’s intent, and we affirm the robbery and theft-of-property convictions. Kimble testified that Wilder grabbed her arm and forcibly pulled her from the front of Alex’s house, to the side of the house, back to the front, across the street, and back to the house. Kimble testified that Wilder shoved her to the ground as he entered her vehicle. Kimble said that once she understood that Wilder was not joking, she became frightened and tried to pull away from him. She testified that she was “hollering” for Wilder to let go of her, but he did not. She further testified that Wilder did not seem disoriented but that “he seemed like he knew what he was doing.” She said that he “just kind of had a grin on his face, you know, like it was a joke.” She further testified that had she not moved out of the way, Wilder would have run over her with the vehicle. She stated that she did not give permission to him to drive her

vehicle. And when he drove off in her vehicle, she immediately reported it stolen. Wilder was later stopped for a traffic violation driving Kimble's vehicle.

Parks corroborated Kimble's testimony. Parks testified when Kimble tried to get inside her vehicle, Wilder grabbed her, pushed her to the ground, and then entered the vehicle. Parks testified that after he witnessed this, he saw that Kimble was frightened. Parks also confirmed Kimble's testimony that Wilder was aware of the circumstances surrounding the incident. Parks, who knew Wilder because they had previously worked together, said that before Kimble arrived, Wilder had been visiting with Parks and Fookie in a normal fashion.

We acknowledge that there was evidence of odd behavior on the part of Wilder. He grabbed a trash can; he opened the gas tank of Kimble's vehicle; he had a grin on his face when dealing with Kimble; after taking Kimble's car without permission, he ran a red light and pulled in front of a police car, almost causing an accident; and he was non-responsive to police after he was pulled over. We also acknowledge Wilder's testimony that he suffers from a brain tumor, he failed to take his medication, he does not remember the event in question, and he had no intent to harm Kimble or take her vehicle. However, the record was devoid of medical evidence documenting Wilder's alleged medical condition. Furthermore, there was evidence presented to the trial court that Wilder was under the influence of PCP and cocaine on October 5, 2006, which might also explain Wilder's odd behavior.

The trial court was presented with all of this evidence and chose not to believe Wilder's version of events. Credibility determinations and conflicts in testimony are for the trial court to resolve. *Russell v. State*, 85 Ark. App. 468, 157 S.W.3d 561 (2004). We are not

at liberty to disturb credibility determinations on appeal. *See Burroughs v. State*, 96 Ark. App. 289, 241 S.W.3d 280 (2006).

Accordingly, we hold that the convictions were supported by substantial evidence.

Affirmed.

GLOVER and BAKER, JJ., agree.